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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

87

Date: **APR 25 2011**

Office: VERMONT SERVICE CENTER

FILE: EAC 08 194 51412

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:** Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner filed this nonimmigrant petition seeking to transfer the beneficiary as an L-1A nonimmigrant Manager, Sales & Purchase,<sup>1</sup> pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas corporation, states that it is engaged in retail trade and investment. It claims to be an affiliate of Ghazi Service Station, located in Karachi, Pakistan.

The director denied the petition on September 17, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

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<sup>1</sup> The petitioner and counsel alternate between referring to the proffered position as a Manager, Sales & Purchasing and a Finance Manager. In the Form I-129, the position is titled Manager, Sales & Purchasing, but in the support letter submitted with the petition, the petitioner refers to the proffered position as a Finance Manager. On appeal, counsel refers to the proffered position as a Sales and Purchasing Manager ("Finance Manager"). As the petitioner indicates in the Form I-129 that the position title is Manager, Sales & Purchasing, the AAO will refer to the proffered position by this name.

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the United States entity in a primarily managerial capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The nonimmigrant petition was filed on July 3, 2008. The petitioner indicated on Form I-129 that the U.S. company has 40 employees, and stated its intention to employ the beneficiary as its Manager, Sales & Purchase. In a letter dated June 26, 2008, the petitioner described the beneficiary's proposed duties as follows:

- Analyzing relevant financial data to produce forecasts of business, industry and economic conditions to utilize in making investment decisions;
- Conducting and preparing a quantitative analyses [sic] and company reports of relevant financial information;
- Interpreting data affecting investment programs, including trends in investments risks and economic influence;
- Determining pricing for goods and services which are offered to the public, after thoroughly analyzing the market trend;

- Reporting directly to Director of Finance; and
- Implementing strategic financial planning goals.

The petitioner stated in its letter that the company is engaged in the businesses of retail trade and hospitality. The petitioner claims to own and operate a restaurant by the name of [REDACTED] as well as [REDACTED],” and [REDACTED]. The petitioner submitted a copy of its 2007 U.S. Corporation Income Tax Return, which indicates it had gross income of over \$6.5 million. The petitioner also submitted an organizational chart for the U.S. company, which indicates that the majority of the petitioner’s workers are cashiers, cooks, waitresses, and dishwashers. The chart also indicates that the beneficiary would directly supervise one employee, [REDACTED] and that the beneficiary would directly report to the Director of Finance. The petitioner also claims to employ a President, a Managing Director, an Operations Manager, and a Restaurant Manager.

The director issued a request for additional evidence on July 14, 2008. In part, the director requested that the petitioner submit the following: (1) a comprehensive description of the beneficiary’s duties that indicates how such duties will be managerial or executive in nature; (2) additional information regarding the beneficiary’s duties with the foreign entity; and (3) an organizational chart for the foreign entity along with complete position descriptions for all the foreign entity’s employees. The director noted that the position description did not include supervision of any employees, even though the organizational chart indicates that the beneficiary will supervise one employee, and that it seems unusual that someone performing the duties of the proffered position would normally have direct supervisory control over retail shop employees.

In a response received on September 3, 2008, counsel for the petitioner stated that the beneficiary would be responsible for the following:

[D]irecting and coordinating [the petitioner’s] financial and budget activities in order to fund operations and increase efficiency. He will also be responsible for overseeing the flow of cash and finances of [the petitioner] in terms of transactions between vendors and suppliers as well as profits generated from customers. He will establish and maintain relationships with local vendors/suppliers and report directly to [the Director of Finance] on any and all findings and conflicts that may arise with the company’s personnel. [The beneficiary] will also prepare comprehensive reports pertaining to [the petitioner’s] financial activities and submit these to the directors and President . . . .

Furthermore, [the beneficiary] will be absolved from performing daily activities for [the petitioner]. He will directly supervise [REDACTED] of the four entities of [the petitioner]), who oversees four (4) cashiers. [REDACTED] in her capacity as Manager, is in the position of first line supervisor/manager for [the petitioner]. She is directly responsible for supervision of the cashiers, ensuring staff adheres to company standards, and providing guidance as the employees handle complex issues or deal with customer complaints. In addition, as [REDACTED] will review and assess cashier

records and daily reports pertaining to the entities sales. Thus, [the beneficiary] will not have “direct supervisor control over retail shop employees” as was stated in the Request for Evidence, but instead, he will directly oversee the work of one of the entity’s managers. [The beneficiary] will require an accurate assessment of finances from Ms. [REDACTED] as she is in the position of knowing profits generated from the customers. Therefore, because [the beneficiary] will be overseeing the work of Ms. [REDACTED] he will be performing qualifying duties as Finance Manager through supervision of her review and assessment of profits.

Counsel did not submit any documentation from the petitioner to support these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, counsel’s assertions regarding the nature of the proffered duties and supervisory responsibilities provided in response to the RFE will not be considered on appeal.

The director denied the petition on September 17, 2008, concluding that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director noted in his denial that the proffered duties are consistent with those of an accounting clerk and purchasing agent as described in the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* and that the petitioner did not provide sufficient evidence that the beneficiary would have substantial managerial discretion.

On appeal, counsel for the petitioner asserts that the evidence submitted in support of the petition demonstrates that the proffered position is closest to that of a purchasing manager or a financial manager, rather than a purchasing agent or accounting clerk, as described in the *Handbook*. Counsel also asserts that the beneficiary will have substantial managerial discretion regarding pricing in the petitioner’s retail store and that the beneficiary will supervise and have hiring and firing authority over another employee who will be responsible for routine tasks. Counsel submits a brief in support of the appeal.

Counsel’s assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity primarily have two common parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial capacity of a beneficiary, including the beneficiary's duties, the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Although counsel argues that the beneficiary will supervise one supervisory employee, the plain language of the statute clearly requires in part that a managerial capacity employee supervise and control "the work of other supervisory, professional, or managerial employees." Section 101(a)(44)(A)(ii) of the Act. Supervising and controlling one supervisory employee, even if established, is insufficient to meet the statutory requirement that more than one supervisory, professional, or managerial employee be supervised and controlled by the beneficiary. *See id.* Furthermore, it is also unclear whether the alleged subordinate, Ms. Laura, will relieve the beneficiary from non-managerial tasks as it appears this employee's primary role is to manage cashiers at one of the petitioner's restaurants. Therefore, it has not been established that the beneficiary qualifies as a personnel manager.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

The petitioner has provided a vague, nonspecific position description that fails to identify the specific managerial duties to be performed by the beneficiary or the amount of time he will devote to such duties. For example, the petitioner's statements that the beneficiary will be responsible for analyzing relevant financial data and interpreting that data conveys little understanding of the actual duties the beneficiary will perform on a day-to-day basis as Manager, Sales & Purchasing of the petitioning company. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine.

The petitioner failed to provide a breakdown of how the beneficiary would allocate his time or to identify the amount of time devoted to specific tasks. Since this description of the beneficiary's duties, which includes operational tasks, fails to quantify the exact amount of time the beneficiary will spend on them, the AAO cannot determine what an average day or week will consist of for the beneficiary. In addition, the fact that the

record does not include a detailed position description regarding the beneficiary's alleged subordinate employee renders it impossible to determine with sufficient certainty whether the beneficiary will be relieved from performing non-qualifying duties associated with financial analysis, interpreting investment data, or general duties associated with operating a restaurant and gas station/convenience stores.

Furthermore, the petitioner indicates that the beneficiary's time will be spent in financial analysis and interpreting investment data, but the organizational chart indicates that the petitioner already employs a Director of Finance, a Managing Director, and an Operations Manager. The petitioner did not provide job descriptions for these other positions, but given their titles and the claim that the petitioner primarily employs cashiers and restaurant personnel, the AAO finds it reasonable to question whether a company that allegedly owns a truck stop restaurant and several gas stations/convenience stores would plausibly require a Manager, Sales and Purchasing in addition to a Director of Finance, a Managing Director, and an Operations Manager. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The fact that a beneficiary will manage a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). Therefore, while the beneficiary in this matter may exercise discretion over the petitioner's finances, the petitioner must still establish that he is not primarily involved in performing the company's day-to-day operations. Overall, the evidence submitted (or lack thereof) suggests that the beneficiary may perform both managerial and operational tasks, but the petitioner has failed to provide any meaningful information to quantify the time the beneficiary spends on them. This failure of documentation is important because most of the beneficiary's daily tasks, as discussed above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *See, e.g., IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Overall, the petitioner's claims are undermined by its failure to provide a detailed description of the beneficiary's duties, including a breakdown of the day-to-day responsibilities, and the lack of supporting documentation to substantiate the petitioner's and counsel's claims that the proffered duties will be primarily managerial in nature. Based on these deficiencies, the AAO is unable to determine the actual duties to be performed by the beneficiary and his subordinates, and cannot conclude that the beneficiary would be employed in a primarily managerial capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, it also cannot be found that there is sufficient evidence in the record of proceeding to establish either (1) that the petitioner has a qualifying relationship with the claimed overseas employer of the beneficiary or (2) that the beneficiary was continuously employed abroad for the requisite one year period of time in a managerial, executive, or specialized knowledge capacity. First, with regard to the claimed affiliation, there is no evidence, for example, regarding the actual payment for the 510 shares allegedly sold by [REDACTED] Furthermore, although the petitioner's 2007 and 2006

federal tax returns appear to corroborate the claimed ownership of outstanding stock, neither return is signed, and the stated \$1,000 value for the stocks issued by the corporation is at odds with what appears to be a corporation earning an annual income of approximately \$1 million dollars. In other words, absent an explanation and evidence to the contrary, it does not appear credible that Mr. [REDACTED] would sell more than half of his ownership in the petitioner for \$510 given its apparent value.

Second, with regard to the beneficiary's employment abroad, insufficient evidence has been presented to establish his actual employment. Although the foreign entity claims that the beneficiary is paid in cash and, as a result, "there are no records of salary slips," this claim is simply not credible. Again, absent an explanation and evidence to the contrary, it is not credible that the foreign entity would not have or maintain some documents relevant to payroll given the claimed size of its operations. Moreover, with regard to the foreign entity's organization chart, no evidence has been submitted to corroborate the claims made in this document. As such, it cannot be found that the beneficiary actually manages or supervises anyone and/or has any subordinates to alleviate the beneficiary from having to primarily perform non-qualifying duties. As such, the petitioner has also failed to establish that it meets the requirements at 8 C.F.R. §§ 214.2(I)(3)(iii) or (iv). For this addition reason, the petition cannot be approved.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.